IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9988 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AMARKUMAR BABUBHAI SOLANKI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 9988 of 1999

MS SADHANA SAGAR for Petitioner No. 1

MR MUKESH PATEL A.G.P. for Respondent No. 1,3

RULE UNSERVED for Respondent No. 2

RULE SERVED for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 24/02/2004

ORAL JUDGEMENT

In this petition, the petitioner's grievance is that though he has been working on the post of Sweeper on part time basis since 14th September, 1995, his service has not been regularized. According to him, at the time when he joined the service in the Police Department at Umalla Police Station, respondent no. 4 herein, he was required to render service for three hours in a day and he was being paid a fixed sum of Rs.300=00 per month towards his wages. It is further averred by him in the petition that he had requested the department vide letter dated 20th November, 1998 to consider his case for permanent appointment in view of the Circular dated 26th December, 1980. However, no positive response was received by the petitioner from other side. It is his say that even today, he has been serving at the Umalla Police Station and though on record he has been shown as rendering service for three hours, the actual hours of working are merely eight hours. His say is that today, he has been getting a sum of Rs.475=00 per month towards his wages. However, this fact is denied by the other side on the ground that he is being paid a sum of Rs.675=00 per month. The petitioner has annexed communication dated 13th September, 1989 of the Deputy Chief Police Officer, (Admn.) State of Gujarat, to the Director of Police, State of Gujarat, wherein it has been stated that a instance of the part timer making a request for granting him full time job on the post of Peon has come to the notice of the Department. In the said communication, the aforesaid Circular is also referred to and it has been directed that in accordance with the said Circular, part timer working on the permanent post continuously for more than three years should be given appointment on permanent basis on full time post available in the same cadre. He has, therefore, prayed that in view of the aforesaid Circular, as well as Communication dated 13th September, 1989, the respondents be directed to absorb him on permanent basis on the post of Sweeper which is Class-IV permanent post.

1.1. As against that, no affidavit has been filed by the other side and the averments made in the petition remain uncontroverted.

2. Having heard Ms. Sadhna Sagar learned advocate appearing for the petitioner and Mr. Mukesh Patel learned A.G.P. appearing for the respondents, and having gone through the record of this petition, it is clear that the issue involved in this petition stands squarely covered by the decision rendered by me in Special Civil Application No. 8917 of 1998 and its cognate matters. In view of the judgment rendered in those petitions, this

petition is required to be allowed with the following directions :-

The respondents are, therefore, now required to be directed that irrespective of the Circular of 21st August, 1995, they shall consider the case of petitioner for appointment on permanent post in Class-IV and if the permanent posts are found vacant, he shall be appointed on the same in accordance with his claim, in the matter of seniority and concerned Regulations and if otherwise, he is not ineligible. Appointment should not be denied on the ground of overage or on the ground that it may amount to giving a back-door entry. This exercise to be carried out as early as possible but in any case not later than 30th May, 2004. If need be, the petitioner can make appropriate representation, which will be considered in light of this judgment and in particular, the direction given therein.

The petition is partly allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

[AKSHAY H. MEHTA, J.]

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